

IN THE MATTER OF THE ARBITRATION

HUMBOLDT COUNTY

CEO No. 312/Sector 1

vs.

AWARD

AFSCME LOCAL 1796 (ROADS)
SCHOOL DISTRICT EDUCATION ASSOCIATION.

John L. Sandy

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STATE EMPLOYMENT
RELATIONS BOARDI. FACTS

This matter was scheduled for arbitration by agreement of the parties pursuant to Chapter 20 of the Iowa Code on the 13th day of August, 2003. Appearing on behalf of Humboldt County (hereinafter referred to as County) was James R. Swanger of the Belin Law Firm. Appearing on behalf of AFSCME/Iowa Local 1796 Secondary Road Crew (hereinafter referred to as Union) was Danny Homan, AFSCME Representative.

The hearing was electronically recorded. The parties submitted evidence, exhibits, and rebuttal arguments. The parties chose not to submit post hearing briefs or exhibits. Also in attendance for the County were Paul Jacobson, County Engineer; Kay Kollmorgen, Supervisor; Romain Lee, Supervisor; Scott Thomsen, PERB Intern and Terry Loeschen, PERB observer. A number of the Union's constituency arrived while the hearing was being conducted. These names were not collected.

II. IMPASSE ITEMS

The parties submitted final offers as required within the appropriate time frames. There were several impasse items which were initially at impasse, however, these items were removed from the undersigned's consideration by agreement of the parties. A prior fact-finding had been conducted on April 12, 2003 by one Frederick P. Kessler. The resultant Impasse Items and the respective positions of each party and the fact finder were as follows:

A. ARTICLE II, Section 2 D; Recognition and Union Security, Dues Deductioni.) County

That this section was the subject of an agency action before Public Employees Relations Board (hereinafter referred to as PERB) and that PERB struck said section. That said section and it's contents are illegal.

ii.) Union

That only a subsection of Article II Section 2 D was struck down by PERB. The Union proposes to delete the inappropriate language which is in compliance with PERB's decision, case #6640. They propose that said subsection should state:

"Such orders shall be terminable with thirty (30) days written notice to the Employer and the Union. Such deductions shall cease within sixty (60) calendar days from receipt of the Employee's notice to terminate dues deduction."

* iii.) Fact Finder

No Position.

B. Article IV Section 3; Adjustment of Grievances, Time Limits

i.) County

That the following language should be deleted from Article IV Section 3 of the contract:

Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure will be considered as having been adjudicated on the basis of the requested remedy on the grievance form.

ii.) Union

That no change in the current language should be awarded.

iii.) Fact Finder

No Position.

C. Article IV Section 7; Adjustment of Grievances Representation

i.) County

That this entire section be deleted. This section provides:

An employee may consult with his/her local Union representative during working hours relative to a grievance matter by first contacting their supervisor. The employee's supervisor shall arrange a meeting to take place as soon as possible for the employee with their Union representative through the Union representative's supervisor.

ii.) Union

That no change in the current language should be awarded.

* It should be clarified that where the undersigned has noted the Fact Finder's position as "No Position", the Fact Finder's ruling is silent as to said item.

iii.) Fact Finder

No Position.

D. Article IV Section 8; Adjustment of Grievances, Processing Grievances

i.) County

That this entire section be deleted. This section provides:

“ Union representatives who are members of bargaining units and grievant will be permitted a reasonable amount of time to process grievances during their regularly scheduled hours of employment. Processing grievances shall be defined as investigating, filing, and attending any step meetings and or hearing regarding grievances. However, only one (1) local Union grievance representative will be in pay status for any one grievance. Whenever possible the Union representatives will provide twenty-four (24) hours notice to their supervisor.

Further, in a group grievance, only one (1) of the grievant shall be in pay status as spokesperson for the group. (Group grievances are defined as, and limited to, those grievances which cover more than one employee, and which involve like circumstances and facts for the grievant involved.)

The Employer is not responsible for any compensation of employees or Union representatives for time spent processing grievances outside their regularly scheduled hours of employment. The Employer is not responsible for any travel or subsistence expenses incurred by grievant or Union representatives in processing the grievances.

Notwithstanding the foregoing provisions of this Section, the Employer agrees to conduct all grievance meetings during the grievant regular hours of work.”

ii.) Union

That no change in the current language should be awarded.

iii.) Fact Finder

No Position.

E. Article IV Section 11; Adjustment of Grievances; Exclusion of Grievant

i.) County

That the second sentence in this section be deleted. This sentence provides:

... "Should the employee be excused by either party the grievance shall be processed in the absence of the aggrieved employee and the Union will be allowed a maximum of two (2) representatives in pay status."

ii.) Union

That no change in the current language should be awarded.

iii.) Fact Finder

No Position.

F. Article VII Section 12; Adjustment of Grievance, Exchange of Information for Processing Grievances.

i.) County

That the entire section be deleted from the contract. This section provides:

- 12a. "The Union and the Employer agree that it is incumbent upon the parties to share all information available regarding grievances involving the Union, Employees, and the Employer.
- b. Employees who are being interviewed in an investigation will, upon their request, be provided with a Union steward during their interview.
- c. Upon request from the AFSCME Council 61 Staff Representative, the Employer will provide the Staff Representative with written statements of witnesses, if they exist, with the witnesses names removed from the statement.
- d. Upon request from the Employer's representative the Union will provide the Employer's representative with statements of witnesses, if they exist, with the witnesses' names removed from the statements.
- e. At the 3rd step the parties will provide each other with the names of the persons who gave statements supplied pursuant to C or D above.
- f. If the grievance is scheduled for arbitration and if the representative of either party desires to interview a witness prior to the arbitration hearing, and the witness has been interviewed by the Employer or the Union in the course of a grievance investigation, the interview shall be conducted in the presence of a representative from the Iowa Public Employment Relations Board (PERB). Witnesses are not required to grant the interview, however, such interview shall be limited to the witness, an AFSCME Council 61 Staff Representative or attorney, and the representative from the Iowa Public Employment Relations Board (PERB)."

ii.) Union

That no change in the current language should be awarded.

iii.) Fact Finder

No Position.

G. Article VII Section 4; Transfers, Foreman Exclusion

i.) County

Create a new section. This section would provide:

"It is understood and agreed that the Area Foreman is an appointed, rather than bid, position, and that accordingly, Area Foremen shall be selected and removed at the sole discretion of the County Engineer."

ii.) Union

That no change in the current language should be awarded.

iii.) Fact Finder

That no change in the current language should be awarded.

H. Article IX, Section 3; Wage and Fringe Benefits, Health Insurance

i.) County

That the County will pay 100% of the premium for single coverage, and employees who desire family coverage will pay 25% of the additional premium. Also, revise to provide for coverage under ISAC Alliance Select Plan 9 effective July 1, 2003. Also provide that "Employees who elect not to participate in single health insurance coverage shall receive \$220.00 per month upon presentation of proof of insurance coverage and certification of continued coverage elsewhere. If any employee does not maintain coverage elsewhere, this payment will cease."

ii.) Union

That no change in the current language should be awarded.

iii.) Fact Finder

The health insurance plan proposed by the County, ISAC Plan 9 is the preferable plan and is recommended. Because of the ever-increasing costs of health insurance, the recommended allocation premium costs is as follows:

Single Coverage
Family Coverage

100% County
90% County 10% Employee

I. Article XI Section 1; Miscellaneous, Work Rules

i.) County

That the entire section be deleted. This section provides:

The Employer agrees to establish reasonable work rules. The Union reserves the right to grieve the application or reasonableness of any work rule so established. These work rules shall not conflict with any of the provisions of this Agreement. Newly established work rules or amendments to existing work rules shall be reduced to writing and furnished to the Union at least fourteen (14) calendar days prior to the effective date of the rule. For purposes of this Article, work rules are defined as and limited to: " Rules promulgated by the Employer within its discretion which regulate the personal conduct of employees."

ii.) Union

That no change in the current language should be awarded.

iii.) Fact Finder

No Position.

J. Appendix "A"; Wages Rates- Secondary Road Employees

i.) County

That no change in Apprentice hourly rate and to increase maintenance and Area Foreman hourly rates by 41 cents per hour effective when the new contract takes effect (no retroactivity).

ii.) Union

That wage increases are implemented over a two stage process. Initially the increase would be a 3% increase and after six months an additional 2% increase would be supplemented to the employees wages. This would result in the following appendix:

TO BE EFFECTIVE JULY 1, 2003

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>	<u>OVERTIME</u>
Apprentice (Probation Period- Six (6) Months)	\$13.52	\$28, 121.60	\$20.28
Maintenance	\$14.12	\$29,369.60	\$21.18
Area Foreman	\$14.90	\$30,992.00	\$22.35

TO BE EFFECTIVE JANUARY 1, 2004

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>	<u>ANNUAL RATE</u>	<u>OVERTIME</u>
Apprentice (Probation Period- Six (6) Months)	\$13.79	\$28,683.20	\$20.69
Maintenance	\$14.40	\$29,952.00	\$21.60
Area Foreman	\$15.20	\$31,616.00	\$22.80

iii.) Fact Finder

"The offer of the Union should accepted, but modified to reflect a 3.5 % increase beginning on July 1, 2003 and a 3.0% increase beginning on July 1, 2004.

III. LAW

Iowa Code Section 20.22(9) provides: The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to the factors peculiar to the area and the classifications involved.
- c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

It is mandated that all issues set forth above are reviewed in light of the foregoing factors.
Iowa State Education Association v. Public Employment Relations Board.

The weight to be given to each of these factors is placed in the discretion of the arbitrator.
Moravia Community School District v. Moravia Education Association.

IV. FINDINGS OF FACT

A) HISTORY

Humboldt County is a rural farming community located in northwest Iowa.

AFSCME/Iowa Council 61, Local 1796 represents all employees of the Humboldt County Road Department, including all drivers, equipment operators, maintenance, motor patrol operators, and area foreman. Excluded are the County Engineer, Secretary, Engineering and Survey Staff and all other Departmental County Employees, Supervisory, and Confidential Employees as defined by the Iowa Public Employment Relations Act. The average bargaining unit wage is \$13.85 per hour for maintenance employees and \$14.47 per hour for area foreman. The average longevity of the employees is thirteen (13) years. The unit is comprised of 22 employees of which four (4) are foreman.

The first Collective Bargaining Agreement between the parties became effective on 7-1-1976 and expired on 6-30-1978. There have been fifteen (15) Collective Bargaining Agreements between the parties. The current Collective Bargaining Agreement became effective on 7-1-2001 and expired on 6-30-2003.

The parties have in the past settled their labor disputes without recourse to fact-finding or arbitration. In fact, mediation has only been used once in order to reach a settlement.

Humboldt County Courthouse employees have this year required fact-finding in regards to their labor agreement with the County. The courthouse employees were not part of a certified unit prior to this year.

B. Comparability Group

The County has selected the following counties for their comparability group: Calhoun, Hamilton, Hancock, Kossuth, Palo Alto, Pocahontas, Webster and Wright.

The Union has grouped two sets of counties for their comparability group. Group One (1) includes: Hancock, Kossuth, Palo Alto, Pocahontas, Webster and Wright. Group Two (2) consists of Boone, Calhoun, Greene and Winnebago. The counties in Group One (1) are counties which border Humboldt County. The counties in Group Two (2) are one county removed from Humboldt County.

The following counties were used by both parties as being comparable: Calhoun, Hancock, Kossuth, Palo Alto, Pocahontas, Webster and Wright. Both parties concede that neighboring counties provide some measure of comparability. The County adds Hamilton County to its pool while Union selected counties one tier away to its pool.

Although both parties used the highest reported grade wage; the county's analysis detailed a wider range of job classifications. Appendix "A" classifies this unit's employees as maintenance apprentice, or area foreman. The Union's analysis detailed only the later of these two employee job classifications.

The following provides an analysis as to both parties comparability groups as to both wages and percentage of participation for health insurance by the County.

<u>SALARIES</u>		
	<u>MAINTENANCE</u>	<u>FOREMAN</u>
Calhoun	14.27	N/A
Hancock	14.08	16.27
Kossuth	13.21	*N/A
Palo Alto	14.28	14.88
Pocahontas	13.81	N/A
Webster	16.05	N/A
Wright	14.00	**15.04
	=====	=====
Average	\$14.24	\$15.04
Hamilton	15.47	17.45
Boone	15.53	N/A
Greene	13.79	14.53
Winnebago	14.71	N/A
	=====	=====
Average	\$14.88	\$15.99
w/o Hamilton	14.67	14.53

* Kossuth County has no employee salary rate for a foreman. It does however have a rate of compensation of \$13.76 for an assistant foreman or assistant lead man.

** It appears from the fact finders Determination that when he conducted his analysis that he used the Asst. position in his calculation for Wright County but not for Kossuth. It was not clear as to why his analysis was conducted in this manner.

HEALTH INSURANCE Participation by County

	SINGLE	FAMILY
Calhoun	100%	100%
Hancock	100%	81%
Kossuth	100%	100%
Palo Alto	100%	100%
Pocahontas	100%	100%
Webster	100%	71%
Wright	96%	75%
	=====	=====
Avg.	99%	90%
Hamilton	90%	90%
Boone	100%	99%
Greene	100%	85%
Winnebago	100%	85%
	=====	=====
Avg.	98%	90%

Cost of Health Insurance

County	County Cost of Single Policy	County Cost of Family Policy
Calhoun	\$357.00	\$771.00
Hancock	\$383.50	\$765.86
Kossuth	\$399.00	\$876.00
Palo Alto	\$399.00	\$876.00
Pocahontas	\$347.00	\$751.00
Webster	\$399.00	\$738.00
Wright	\$348.00	\$683.25
AVERAGE	\$376.07	\$780.16

County	County Cost of Single Policy	County Cost of Family Policy
Hamilton	\$399.00	\$751.00
Boone	\$399.00	\$875.00
Greene	\$342.16	\$ 535.13
Winnebago	\$335.64	\$ 743.00
AVERAGE	\$368.95	\$ 726.03
AVERAGE W/O HAMILTON	\$358.93	\$717.71

C. Ability to Pay

The parties stipulated that neither of the final offers nor the fact finders recommendations would trigger a situation in which the County wouldn't have an ability to pay.

D. Other Factors

- i.) Humboldt County Courthouse Units Fact Finding Recommendations.
- ii.) US Department of Labor, Bureau of Labor Statistics, Consumer Price Index.
- iii.) US Census Bureau's Analysis of Humboldt County in contrast to Iowa's other counties.
- iv.) Ranking of County Population, County Property Taxes and County Taxable Property Valuations.
- v.) Cornbelt Power and Chant land Co.'s health insurance plans and employee contributions.
- vi.) Des Moines Register's Editorial, 3-6-03.
- vii.) Wall Street Journal Article, 5-8-03.
- viii.) Independent, Front page, 8-14-03.

V. DISCUSSION

This arbitration contains 10 impasse items before the undersigned for determination. These items can be classified into three types of disputes. Those are: contract language, health insurance and wages. We are initially met with contract language modifications. These consist of deletion or addition of current contract terminology.

The County has asserted that PERB has issued a decision regarding the validity of Article II Section 2 D. They contend that by agency determination, the entire section has been struck and that any effort to maintain a portion thereof is volatile of the same. Conversely, Union contends that the PERB decision did not in fact strike the entire section and a portion of the same remains intact.

Neither party submitted the PERB decision.

The undersigned decision as to this matter assumes that I possess the jurisdiction to determine which parties position is the most reasonable. My award does not suggest to interpret any PERB decision previously issued as it relates to this subject matter. My award only selects which of the parties positions is most reasonable. Therefore this award is contingent upon any prior or future decision or interpretation by PERB.

The County as previously mentioned desires that the entire section be struck. The Union proposes that when it comes to Union Dues being deducted from an employees payroll that the County has 60 days from the employees notice to the County to terminate the same.

Fact Finder Cox proposed fact finder found that Article II section 2.4 (D) should state:

Such orders shall be terminable with thirty (30) days written notice to the Employer and the Union. Such deductions shall cease within sixty (60) calendar days from receipt of the Employee's notice to terminate dues deduction.

It appears that Mr. Cox noted the parties disparity where he stated:

"The Parties are in agreement on the provisions of Article II, Section 2.1, 2.2, and 2.3. These Union proposals were tentatively agreed upon by the County March 1, 2003 and I recommend them.

There is sharp division on the check off provision which I have designated as Section 2.4.

Local 1796 seeks standard check-off language while the County proposes that the Union collect their own dues. Dues deductions are currently in effect under two other Agreements this Local has with the County and, in general throughout Iowa, are accepted elements of Collective Bargaining Agreements. No alternative language was suggested. There was no evidence that the County has had any difficulties with existing check offs. While there are extra administrative costs, in this case the County has already set up a process for deductions and there is no indication that the cost of the processing would be significant. The County did not contest this demand upon cost. Frequently having a check-off is of benefit to an Employer in that it avoids employee disruption sometimes associated with being contacted in order to collect dues. I recommend that the Union proposal on this language become a part of the Agreement and I have included it in Article II as Section 2.4 with some wording changes."

I, unlike Mr. Cox, do not possess the authority to fashion language. I must select which proposal is the most reasonable. For the same rationale as enumerated by Mr. Cox, I hereby find the Union's proposal as to language to be more reasonable and award the same.

The County also seeks to strike the second sentence of Article IV Section 3. The import of this sentence is that where the Employer fails to answer the grievance during any step of the grievance procedure will result in a default judgment in favor of the Union.

Fact-Finder James R. Cox addressed this issue in his recommendations for the initial

contract of the Court House staff. He noted:

"I agree with the County's position that Grievances should not be automatically granted should the County not make a timely response. The main purpose of time limitations into a Grievance Procedure is to insure that any Grievance is filed timely when the dispute is fresh and the facts readily ascertainable. Further time limitations at the Steps are designed to facilitate the movement of the dispute toward a prompt resolution. The recommended language accomplishes these desirable objectives through a modification of the Union's proposal which provided for automatic movement to a higher step should the County fail to respond within the time constraints. The purpose of a time limit on grievance filing and processing is to expedite the procedure and address problems at the lowest level. The Recommended Article is consistent with that goal."

Here, however, this like a plethora of other language items, this language has been a part of a comprehensive contract for a protracted history.* It was not argued that this language has resulted in any injustice to the County. However, that said language is so manifestly unfair that it borders on being unconscionable. The underpinning of this contention is that the substance of the dispute is lost to a procedural err.

Conversely, it was not asserted that this stopgap language was necessary to prevent past bureaucratic delays.

The actual grievance procedure is embodied in Article IV Section 2. Step 1 of this protocol involves presenting the grievance to the employees supervisor, the Area Foreman. This step provides:

- A) An employee or Union Representative who claims a grievance shall present such written grievance, to their supervisor, within fourteen (14) calendar days after the receipt of knowledge of the alleged violation upon which the grievance is based. Within seven (7) calendar days of receipt of the written grievance from the employee or their Union representative, the supervisor shall schedule a meeting with the appropriate Union representative (with or without the aggrieved employee) and attempt to resolve the grievance. A written answer will be placed on the grievance following the meeting by the appropriate supervisor and returned to the employee and their union representative within seven (7) calendar days from receipt of the written grievance submitted to the supervisor.

* The predecessor to this language was originally part of the parties 1976 to 1978 contract. The language provided that the failure by the Union or County would have these results. SEE: Article 7.3; 7.4 This language modified in the 89-91 contract to its current form.

Since the Area Foreman and the maintenance employee are both members of the Union the potential of a conflict of interest exists.

Unlike Mr. Cox, my review of this language is not in the context of creating an initial contract but rather striking language from a contract that has been in existence for a number of years. It is my award to strike this language. The potential of conflict of interest exists. That is, a grievance filed by a maintenance employee first is addressed by the area foreman. The area foreman is charged with the responsibility to file a written answer within the procedural guidelines of Step 1. Since both are members of the Union, a conflict of interest exists.

Article IV continues to be a fertile ground for dispute. The County asserts that Section 7 should be stricken. This section embodies two concepts. First, that work hours may be used for the purpose of discussing a grievance between an employee and their Union Representative. Secondly, that the supervisor has the duty of scheduling this meeting. Like its predecessor, Mr. Cox discussed this topic in his fact finding. He noted that no evidence was presented that the County has had a problem with excessive use of paid time for grievance handling with this specific union. Mr. Cox cautioned against grievance handling on work time delaying or interfering with the performance of a employees duties and responsibilities.

Since the Supervisor is charged with the responsibility of scheduling this conference, this risk is minimized. This has been a portion of the contract for a number of years.

It is for these reasons the County's request that Section 7 should be stricken must be denied.

Moving on to Section 8 of Article IV, the County once again seeks to delete the entire section. Similar to Section 7, this section flushes out what is meant by processing a grievance. Once again it is noteworthy that this language has been a part of the parties Labor-Management Agreement for a substantial period of time. No abuses of this language have surfaced between the parties. In fact, similar to Mr. Cox's analysis no evidence of any abuse were presented at hearing.

It appears to the undersigned that the County's position for a number of items is an effort to undo over two decades of collective bargaining. The concern the undersigned has is that no facts support these positions. This is not a "First Contract."

Also assuming arguendo that an employee has the right as expressed in Section 7 to discuss his grievance with the Union Representative it seems illogical to restrict those discussions and efforts by striking all of Section 8. Specifically, that the employee is paid to discuss his case with his Union Representative but is not compensated for the actual hearing.

For all the foregoing reasons I am not persuaded that Section 8 of Article IV should be deleted. I therefore deny the County's request as to deletion of this Section.

Section 11 is the next contractual language to be addressed. The County desires that the second sentence in this section be deleted. The language sought to be excised here provides

that where the grievant is excused during any of the steps of the Grievance procedure, the grievant will be permitted to have two of his co-workers present. These individuals will be compensated for the time they are present of the grievance procedure. Further, this excusal can be by either the Union or the County.

It is conceivable that the Union can excuse grievant from the grievance proceeding and thereby replace grievant with two co-workers.

It is noteworthy that no evidence of comparable counties grievance procedures were introduced.

Although comments were made as to unfair labor practices, no evidence was introduced as to how many grievances were filed during the course of the last labor management agreement. Nor was there any testimony that the Union exercised its authority in this vein. Once again it's revealed that the parties long since agreed to this language. Now, the County seeks to rewrite the contract.

Both parties are knowledgeable as to the Arbitrator's disdain for substituting their judgment for that of the parties. Where requested to do so there should be some compelling motivation to make such a recision. The bargaining table give and take and not the arbitrator's ink should stitch the fabric of the parties agreement. Absent some compelling rationale, I am not inclined to rewrite the parties contract. No compelling rationale has been submitted to strike this language. Further no comparable grievance language was submitted revealing that this subsection is at odds with other comparable county contracts. I therefore award that this section not be modified from it's current form.

Similarly, the County seeks to rewrite by exclusion Article 12 of the Grievance procedure. The same application of criteria is applicable here. No evidence was adduced revealing that this contract language was at odds with other comparable counties. No testimony or other evidence revealed the abuse or misuse of said language. In fact, Section 12 provides a mechanism so that the parties are fully prepared and informed so that they each can effectively represent their client. These obligations and responsibilities apply to both the Union as well as the County.

Where subsections of this section require fine tuning this should be done at the bargaining table not by wholesale deletion by arbitrator's pen. I am unable once again to award the deletion of this section as requested by the County.

The next "language" item before the undersigned is the County's request to add a new section to Article VII. Section four (4) would take four of the employees who are classified as Foreman and make them appointed positions. Further, this appointment as well as their termination would be "at the sole discretion of the County Engineer."

Currently, the position of Foreman is a bid position. That is, when the county has an opening for the job of Foreman other members of the unit bid for the job. Since seniority is the paramount consideration, the County is limited in offering the position to members of the

unit with the greatest seniority. Clearly, this new language would totally eviscerate seniority provisions contained in Article VII.

Also, the Foreman's termination being at the "sole discretion" of the County Engineer would seem to insulate the County Engineer's decision from any review.

This new section appears to be spawn by an unsuccessful effort by the County to amend the bargaining unit to exclude Area Foreman from the bargaining unit. On December 6, 2002, Administrative Law Judge, Charles E. Boldt issued a decision dismissing the Petition. Thereafter, the County appealed and PERB entered an order affirming Boldt's decision.

The County's proposal here is a transparent effort to accomplish through a language change what it was unable to achieve at hearing. This effort would not only diminish the protections afforded to members by its seniority provisions but moreover totally strip the Foreman job classification of any of the protections that twenty plus years of negotiations have accumulated. In Humboldt like other counties, the County Engineer is appointed by the Board of Supervisors. The next County Engineer could in his "sole discretion" decide to terminate all Foreman and appoint whomever he deemed appropriate to fill these positions. These types of changes are unwarranted based on the labor management history of the parties. The undersigned does not accept the County's proposed language change to Article VII Section 4.

The last "language" revision the County would have the undersigned undertake involves Article XI, Section 1. This section requires the employer to establish a reasonable standard when formulating new work rules. Secondly, this section requires that new work rules should be reduced to writing and provided to the employees fourteen (14) days prior to their implementation.

Apparently, the County is of the opinion that requiring that work rules meet the standard of being reasonable is too onerous a burden. Or that notice of these rules be reduced to written form and provided to all 22 employees prior to their implementation is too drastic a request of them.

Similar to the plethora of other language modifications, no evidence was adduced revealing problems in the past with this section. Nor was an analysis provided revealing how this language deviates from the norm. The undersigned will not award the deletion of Article XI, Section 1, which requires notice of work rules which are reasonable.

The second classification of impasse items involves health insurance coverage. Current contract language provides:

"The County's present health insurance benefits for regular road employees will remain in effect for the life of this Agreement. The County agrees to pay one hundred percent (100%) of premium of the policy for Single Person Coverage, and one hundred percent (100%) of premium for Family Plan coverage. The county agrees to pay these premiums as long as the employee is in pay status for at least one day of the month for which the insurance premium is paid.

The Comprehensive Hospital and Medical Health Insurance plan provided herein shall be a comprehensive plan of insurance that will provide for 100% of Hospital stays and Major Medical coverage. The coverage will be provided through both Blue Cross/Blue Shield and the TPA. Blue Cross/Blue Shield will provide for the first 80%/20% coinsurance and deductible. The TPA will provide coverage after Blue Cross/Blue Shield to make the final coinsurance and deductible amount for regular road employees 90%/10%.

An employee's actual out-of-pocket expense per calendar year shall be limited as follows:

Deductible: On a single plan, Blue Cross/Blue Shield will provide a \$750 deductible on covered expenses, and the TPA will reimburse the regular road employee back to a deductible of \$100.

On a family plan, Blue Cross/Blue Shield will provide a \$1,500 deductible on covered expenses, and the TPA will reimburse the regular road employee back to a deductible of \$200.

Coinsurance: On a single plan, Blue Cross/Blue Shield will provide 20% of all remaining covered expenses and \$1,500 for out-of-pocket expenses, and the TPA reimbursement to the regular road employee for a single plan will provide for a total of 10% of remaining covered expenses up to a maximum out-of-pocket expense of \$400. (\$500.00 maximum out of pocket expense combined with deductible and coinsurance.)

On a family plan, Blue Cross/Blue Shield will provide 20% of all remaining covered expenses and \$3,000 for out of pocket expenses, and the TPA reimbursement to the regular road employee for a family plan will provide for a total of 10% of remaining covered expenses up to a maximum out-of-pocket expense of \$800. (\$1,000.00 maximum out of pocket expense combined with deductible and coinsurance.)

Lifetime

Maximum: No Maximum

Emergency

Accident

Maximum: Maximum of \$300.00 per accident.

Drug Card:

Deductible: The first \$50 of covered expenses for single coverage will be covered by the TPA.

The first \$100 of covered expenses for family coverage will be covered by the TPA.

After deductible has been satisfied, the following co-pays from Blue Cross/Blue Shield shall apply:

\$ 5.00 for generic drugs

\$15.00 for Brand name drugs

\$25.00 for Brand name drugs not on the Formulary

Prescription Deductibles and co-pays will be applied by the TPA to the Major Medical deductible (\$100.00 or \$200.00) and/or after out-of-pocket limits (\$500.00 or \$1000.00) have been met.

Under the contract which expired June 30, 2003, members of the Unit were insured by plan number 7 which was an Alliance Select 1000; 80/20. The deductible had been \$1000.00 for single and \$2000.00 for family. The County would then pay a premium into a third party administrator (hereinafter referred to as TPA) to buy down the deductible to a \$100.00 single and \$200.00 family exposure rate.

As of July 1, 2003 plan number 7 was discontinued and plan number 9 Alliance Select 750-80/20 was substituted. Under the prior plan the County paid \$30.00 per month for a single TPA expense and \$55.00 per month for a family TPA expense. Under the new plan a \$750 deductible applies to single coverage while a \$1500.00 deductible applies to the family coverage. The County's proposal would do away with the third party administrative subsidy. This would mean that an additional \$650.00 per year cost for single coverage and \$1300.00 per year cost for family coverage would be borne by the employees.

Currently, prescription drug costs are paid by the County through the third party administrator. The employee co-pay amounts are \$5.00, \$15.00 and \$25.00 dependent on the type of drug procured. Under the County's proposal the Drug Card expense would be borne by the employee at a rate of \$50.00 for a single plan and \$100.00 for family plan. Also, prescription co-pays would be increased to \$10.00, \$20.00 and \$45.00 dependant on the type of drug procured.

Aside from these nuances, the County desires to shift the cost of the family plan from 100% paid by the County to requiring those employees to pay 25% of the difference between single and family plans.

Also, the County is proposing to provide a \$220.00 monthly stipend for any employee not taking health insurance under the contract. The employee would be required to provide proof of coverage through some other source.

One of the few items which the fact finder did in fact render a recommendation was health insurance. His analysis resulted in the following award:

Health Insurance

The health insurance plan proposed by the County, ISAC Plan 9 is the preferable plan and is recommended. Because of the ever increasing costs of

health insurance, the recommended allocation premium costs is as follows:

Single Coverage	100% County
Family Coverage	90% County/ 10% Employee

The Union desires to maintain current contract language.

Practical as well as philosophical issues are in play here. This is an extremely complex item. This final draft represents an analysis which has been expressed in a number of different permutations addressing the fact finders recommendations. I gave great deference in following the fact finders findings and recommendations. However, I am unable to concur in those recommendations. PERB's decision finding that "(t)here can be no doubt that the fact finders recommendation in this case is seriously flawed by the fact finder's errors" is gracious.

First, the new plan, plan 9 apparently has already been implemented. The members of this unit are currently under the provisions of the same. Whether preferable or not it appears to be a moot topic. The fact finder appeared to have taken a different approach between what the County proposed, 25% of the additional premium and what the Union proposed, 100% of family paid by the County. The fact finder set a strict 10% participation expense for employees selecting a family plan.

He apparently supported this contention by recommending a two year contract. His recommendation was silent however as to the retention of and payment for a third party administrator, the level of participation by the TPA as applicable to deductible, co-insurance and drug cards and prescription charges. Also, the recommendation is silent as to the \$220.00 monthly stipend for employees who choose not to take health insurance.

It is for these reasons that the undersigned is unable to join in my counterparts recommendations as to Health Insurance.

Historically, health insurance was 100% subsidized for the single person from the first contract which was reached effective July 1, 1976 to the current contract which expired June 30, 2003.

The County agreed effective July 1, 1980 to fully subsidize family plan coverage for the members of this bargaining unit. This subsidy remained unchanged in the County's level of participation to the current contract which expired June 30, 2003.

The current contract which commenced July 1, 2001 was the first contract to provide for a Third Party Administrator's participation. This participation further reduced the expense to the employee from that of the plan's parameters.

An analysis of the bargaining history as to pay increases reveals that for the 81-82 and 86-87 contract years the employees of this unit failed even to receive a cost of living increase and took a pay freeze.

It is uncontroverted that historically, the members of the unit accepted lower pay increases in order to offset the cost of this benefit.

From a comparability perspective, clearly the majority of counties which both parties agree are comparable provide this benefit to their employees on a single as well as family coverage basis. Four out of seven counties; Calhoun, Kossuth, Palo Alto, and Pocahontas all provide family coverage health insurance benefits at no cost to the employee. The average cost those four counties pay for family coverage averages in excess of \$818.00 per month.

This amount exceeds what the cost to Humboldt County's family plan currently costs.

The undersigned is also mindful of the form by which these benefits have been provided within the contract. Since 1980 the contract has stated 100% of the cost. Where the County sought to limit it's exposure, it could have simply placed a dollar value as opposed to a percentage calculation in it's contract.

The County asserts that it attempted to negotiate this item with the Union to no avail. That is was required to present it through this medium in order to resolve the matter. It is abundantly clear that relations between the parties spokesmen are not conducive to amicable resolution. However, I am not convinced that one trip to the arbitration forum in and of itself warrants doing away with over two decades of a benefit. Furthermore, the rise in insurance cost for Humboldt County is less than the average increase as reported in the William Peterson, Executor Director, correspondence dated December 16, 2002.

I am also mindful as to the incompatibility awarding the Union's position will have in light of Mr. Cox's fact finding recommendations. As noted earlier, fact finding recommendations for an initial contract do not carry a history of over two decades of purchasing a benefit.

A second triggering event may have changed this outcome. That is an increase in this expense which out surpasses the norm. Burlington School District experienced this situation a few years ago. This was not evident here.

It is for all the above stated reasons that I must award the Union's position on health insurance benefits.

Historically, this unit's employees have faired better than a cost of living increase when wages have been negotiated. County's Exhibit, Index #7, accurately reflects that over the course of the last decade hourly wages have increased an average of 3.26% per year. This was during a decade when the rate of inflation averaged 2.45% per year. The contracts therefore averaged more than three quarter of a percent than the rate of inflation.

Utilizing the parties comparable counties, the average maintenance level salary is \$14.24 per hour. Addition of second tier counties and Hamilton County reveals an average hourly rate of \$14.88.

Currently, maintenance employees receive an hourly rate of \$13.71. With the County's proposal of a \$.41 increase, the average hourly rate will become \$14.12. This increase would be the same by the union's proposal, however, a second raise would be implemented January

1, 2004. The hourly wages would be increased 28 cents or an additional 2 per cent.

The Fact-Finders recommendation is for a 48 cent increase. This represents a 3.5 per cent increase.

According to the consumer price index for 2002; a 1.2 percent increase was realized in 2002.* Also of import is the financial ramifications of this arbitrator's decision previously awarded in the insurance benefit.

Awarding the insurance benefit amounts to a \$.77 increase hourly family health insurance cost to the county. This coupled with the county's wage increase offer would provide a total package increase of 6.4%. The union proposal could arguably be viewed as an 8% increase.

Using the fact finder's maintenance award coupled with the undersigneds decision as to the health insurance, it would add up to a total county paid wage and family health insurance cost per hour of \$19.61 or a 6.8% increase. No analysis was provided by the County as to what impact this proposed \$.41 increase would have a result of the Foreman's overall package. Also, no breakdown was provided as to how many of the 22 employees elect family versus single coverage. The County's proposal being a \$.41 across the board proposal would amount to a 2.8% increase for the Foreman. The County's proposal also freezes the Apprentice rate of compensation.

Lastly the County asserts that their proposal would only be prospective from the date of issuance of the undersigneds decision.

The Union's proposal is a two tier approach. The net affect being a cost to the county of 4%. However, the increase would raise salaries 5% over current compensation in one contract year. The Union's proposal would increase the apprentice's wages a total of \$.66, the maintenance's wages a total of \$.69 and the Area Foreman's wages of \$.73. The wage increase would be retroactive to July 1, 2003. Area Foreman's current hourly wage is \$14.47. The County's wage increase would amount to a hourly wage of \$14.88.

In reference to comparable counties, the average is \$15.04. With Group Two wages with and without Hamilton County, the disparity ranges from \$14.53 to \$15.99. An additional increase of \$.30 would be implemented on January 1, 2004 by the Union's proposal. The fact finder's recommendation would result in \$.51 increase for the area foreman to raise the hourly wage to \$14.98.

The Union argues that no increase to the apprentice wages will have a stifling affect on the countries ability to hire new employees. No evidence was presented however that the County has had any problem recruiting new employees.

* This is based on Midwest Urban Region.

It is the undersigned's decision to award the Union's wage proposal for these reasons.

The Union's proposal increases wages for all three members of the bargaining unit. The County's proposal would exclude apprentice position. The Union's proposal increases the salaries proportionally. This would be a 3% increase for the first six months and then an additional 2 % increase for the remaining six months. The cost to the County would be 4% overall cost.

The Union's proposal is retroactive to July 1, 2003 while the County's proposal is not. It does not seem logical to agree to a one year contract with its expiration date being June 30, 2004 but not to pay any increase until the arbitration award is issued.

As a practical matter, since the County is only suggesting that any increase is for the time the award is issued until June 30, 2004, their proposal would amount to a 2.49% increase as opposed to a 3.0 % increase. That is because 2/12 of the contract period have expired by the date of this award.

The increases to salary alone over the last decade as asserted by County have averaged 3.26% of which the Union's proposal of 4.0 % increase is closer to the average than 2.49%.

Since the fact finders award was premised on a two year contract award versus a one year contract it's value is discounted as an alternative.

For the last two contracts, the parties have negotiated a straight percentage increase. These increases have averaged 3.65%. Once again the Union's proposal for a pay increase is an across the board percentage increase and only a fraction of a percent greater than what has been negotiated for the last two contracts. Conversely, the County's proposal is for a flat rate and considering it's prospective nature is over a per cent lower than what has been negotiated in the last two contracts.

Not since the 1985-1986 contract has the Apprentice classification not received some wage increase. In 1985-1986 a wage freeze affected all wages. To not extend a wage increase when the cost of living index reveals a 1.2 per cent increase is not reasonable. These individuals do not receive any benefit as to the County's proposed wage proposal.

Utilizing the comparable counties that both parties agree on, the Maintenance and Foreman hourly wages would lag behind their average salary counterparts for the first six months of the contract while placing them ahead of the average for the second six months of the contract.

It is for the foregoing rationale that the Union's position as to wages is the most reasonable and should be awarded.

CONCLUSION

In conclusion, three categories of items were at impasse for this arbitration. In reference to the language items save for Article IV Section 3; the undersigned awards the Union's proposals. In reference to Article IV Section 3; the undersigned awards the County's position, striking the language as requested.

In reference to health insurance the undersigned awards the Union's position as to continuing coverage in its current format. No stipend is provided to employees electing not to take County health insurance.

In reference to the percentage of a wage increase. The undersigned believes the most reasonable pay increase is the Union's proposal and so awards the same.

The effective date for said increase will be July 1, 2003 and the contract will be for a one year duration terminating June 30, 2004.

Respectfully Submitted.

By 

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ARBITRATOR

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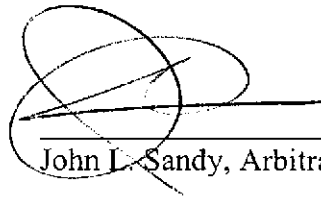
CERTIFICATE OF SERVICE

I certify that on the 28th day of August, 2003, I served the foregoing Award on Fact finding upon each of the parties to this matter by (_____) personally delivering)(X mailing) a copy to them at their respective addresses as shown below:

Danny Homan
3000 Isabella Street
Sioux City, Iowa 51103

James R. Swanger
666 Walnut Street Suite 2000
Des Moines, Iowa 50309-3989

I further certify that on the 28th day of August, 2003, I will submit this Award for filing by (_____) personally delivering) (X mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.



John L. Sandy, Arbitrator

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